



May 21, 2002

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2002-2732

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163228.

The College Station Police Department (the "department") received a request for fourteen categories of information relating to a named police officer. You have redacted most of the driver's license and license plate numbers in accordance with previous determinations from this office, and we have marked additional information that is subject to those rulings. *See* Open Records Letter Nos. 2001-5847 (2001), 2001-5574 (2001). You claim that other submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your claim that portions of the submitted information are not responsive to the request. The Public Information Act requires a governmental body to release only information that it believes to be responsive to a request. However, in determining whether information is responsive, a governmental body has a duty to make a good faith effort to relate the request to information that it holds. Open Records Decision No. 590 at 1 n. 1 (1991). We have reviewed the submitted information and conclude that it is all responsive to the request. We will therefore address all of the submitted information in determining whether the exceptions you claim apply.

We must next address the applicability of section 552.007 of the Government Code, which provides that if a governmental body voluntarily releases information to any member of the

public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989). You have informed us that the department has previously released Exhibits C-1 through C-126, with certain information redacted, in response to prior public information requests. Because the department has voluntarily disclosed this information to a member of the public, the department may not now withhold such information unless its release is expressly prohibited by law. Sections 552.103 and 552.108 are both discretionary exceptions and do not prohibit the release of this information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive law enforcement exception); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Therefore no information in Exhibits C-1 through C-126 may be withheld under section 552.103 or 552.108. We will, however, address your claims regarding section 552.117 in relation to exhibits C-107 and C-125.

Section 552.117(2) provides that information that relates to the home address, home telephone number, social security number, or family member information of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer made an election under section 552.024 of the Government Code to keep such information confidential. The department must therefore withhold the information we have marked in exhibits C-107 and C-125 that would reveal the officer's home address, home telephone number, social security number, and family member information. *See also* Open Records Decision No. 670 (2001) (providing that governmental bodies may withhold information under section 552.117(2) without requesting decision from this office).

We also note that Exhibits C-18, C-22, and C-23 contain polygraph information, the release of which is prohibited by law. Section 552.101 of the Government Code encompasses information made confidential by statutes such as section 1703.306 of the Occupations Code, which provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. Because the requestor does not fall within any of the enumerated categories, we find that you must withhold the polygraph information that we have marked in Exhibits C-18, C-22, and C-23.

Finally, we turn to Exhibits C-127 through C-135, which have not previously been released. You assert that this information is excepted from disclosure by section 552.108 the Government Code. Section 552.108 provides in part that "[a]n internal record or notation of a law enforcement agency or prosecutor is excepted from [required public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code

§§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the officer whose records are at issue will be the main witness in a pending criminal prosecution and that Exhibits C-127 through C-135 relate to his credibility so that their release would interfere with the pending prosecution. Based upon these representations, we conclude that the release of these exhibits would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.–Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, you may withhold Exhibits C-127 through C-135 under section 552.108 of the Government Code. As we are able to make this determination, we do not address your arguments regarding section 552.103 with respect to these exhibits.

In summary, the department must withhold the officer's personal information that we have marked as well as the marked polygraph information. The department may also withhold Exhibits C-127 through C-135. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

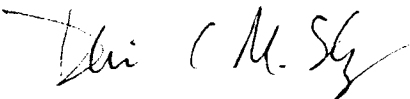
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 163228

Enc. Marked documents

c: Mr. Jim W. James
P.O. Box 1146
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(w/o enclosures)